

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

Criminal No. 00-37
[Civil Action No. 01-1528]

KEITH CLARK

ORDER OF COURT

Defendant has filed, pro se, a motion (Document No. 47) requesting this Court grant him “leave to allow Petitioner to preserve his Due Process claim properly in the above captioned case, under United States v. Dodd, 545 U.S. ____ (2005) [to] deal with the possible issue of retroactivity within the recent Booker v. United States, 543 U.S. ____ (2005)”

The Court **HEREBY DENIES** this motion because the Supreme Court's decision in Booker does not apply retroactively to cases on collateral review, and therefore, there is nothing for petitioner to preserve. United States v. Lloyd, 407 F.3d 608, 615 (3d Cir. 2005) (“Booker does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued.”). In the event either the Supreme Court of the United States or the United States Court of Appeals for the Third Circuit rules that Booker applies retroactively, petitioner may file a motion for appropriate relief at that time, and this Court will consider petitioner’s attempt herein to preserve any Booker arguments in determining the timeliness of such motion.

SO ORDERED this 16th day of December, 2005

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc:
Keith Clark, Petitioner
Bruce Teitelbaum, AUSA